

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Order Instituting Investigation and Order to Show Cause on the Commission's own motion into the operations and practices of Fan Ding (aka Ding Fan or Lisa Ding), an individual doing business as Lucky Moving Co., Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northman Immigration Service,

Respondent.

Investigation 04-07-003
(Filed July 8, 2004)

OPINION APPROVING SETTLEMENT**I. Summary**

This decision adopts a settlement between Fan Ding (Respondent), an individual doing business as Lucky Moving Co., Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northman Immigration Service; and the Commission's Consumer Protection and Safety Division (CPSD). Under this settlement, Respondent will pay \$14,000, which includes a \$4,500 fine and a \$9,500 assessment for investigative costs. The settlement also requires Respondent's future operations to comply with the law.

II. The Order Instituting Investigation (OII)**A. Respondent**

Respondent applied for a household goods carrier permit on March 21, 2002, on August 27, 2002, and most recently on February 27, 2004. The Commission's License Section denied the first two applications on August 2, 2002, and February 20, 2004, respectively, for failure to file evidence of

public liability, cargo and workers' compensation insurance coverage, failure to supply required documents, and failure to successfully complete the required MAX 4 examination. License Section notified Respondent on March 15, 2004, and again on April 14, 2004, that her third, pending application cannot be processed, and may be denied, for the same reasons that the first two applications were denied.

Meanwhile, on February 18, 2004, the Commission filed a complaint against Respondent in the Superior Court for the City and County of San Francisco, alleging that Respondent:

- Violated Pub. Util. Code § 5314.5 by advertising and holding out to the public that it is in operation as a household goods carrier, without a valid permit;
- Violated Pub. Util. Code §§ 5139 and 5161 by failing to procure, maintain and file proof of adequate liability protection and cargo insurance while conducting operations as a household goods carrier;
- Violated Pub. Util. Code § 5135.5 by failing to procure, maintain and file proof of workers' compensation insurance coverage while conducting operations as a household goods carrier;
- Violated Pub. Util. Code § 5133 by conducting operations as a household goods carrier without a permit; and
- Violated Pub. Util. Code §§ 5135 and 5139, and Item 88 of MAX 4, by falsely displaying another household goods carrier's permit, and by falsely displaying the Better Business Bureau logo, in its advertising.

The complaint seeks a temporary restraining order, a preliminary injunction, and civil penalties. The court issued a temporary restraining order on March 11, 2004, and a preliminary injunction on April 12, 2004, barring Respondent from operating without a license and removing, without prejudice, the Commission's request for monetary fines and sanctions from the court calendar.

B. The OII's Allegations

On July 8, 2004, the Commission instituted this investigation into Respondent's operations and practices. The OII directed Respondent to show cause why her pending application for a household goods carrier permit under Pub. Util. Code § 5135 should not be denied for cause and lack of fitness in view of the alleged violations listed above, and in view of the alleged continuation of those violations since the court issued the temporary restraining order and preliminary injunction. In addition, the OII indicated the Commission would consider whether to impose fines for such violations.

C. Procedural History

A prehearing conference was held on August 26, 2004, to address the schedule, the issues, and the procedural requirements for Respondent to defend herself against the allegations set forth in the OII. At the prehearing conference, the parties agreed to stipulate to the admission of prepared testimony into the record, to forego evidentiary hearings, and to submit the matter upon the filing of concurrent briefs. A scoping memo and order was issued on September 1, 2004, memorializing the procedural schedule.

On November 1, 2004, before the time for filing testimony or briefs, CPSD and Respondent filed a joint motion for Commission adoption of a settlement. A copy of the settlement is attached as Appendix A. According to the settlement, Respondent shall pay a \$4,500 fine plus \$9,500 in investigative costs, and agrees to be in full compliance with the law in the future.

III. Discussion**A. Standard of Review**

Rule 51.1(e) of the Commission's Rules of Practice and Procedure provides that the settlement must be reasonable in light of the whole record, consistent

with the law, and in the public interest for the Commission to approve it. We examine the settlement in light of these three criteria.

1. Reasonable In Light of the Whole Record

The settlement imposes a \$4,500 fine plus \$9,500 in investigative costs, for a total assessment of \$14,000, to be paid in four installments. The settlement is reasonable because the outcome effectively deters future violations, imposes reasonable fines, and brings about compliance with the law. The settlement is also reasonable in that it takes into account the severity of the violations, and compensates the State for the costs of the investigation.

The evidence indicates that Respondent committed numerous violations of the rules governing operations and the temporary restraining order and preliminary injunction against operating without a permit. In addition to the violations alleged in the OII and supported by the evidence, the proposed settlement indicates that Respondent conducted over 100 moves without a permit. The evidence also indicates that CPSD invested over 425 hours of investigative work in this matter, at a value of over \$13,000 based on the salary of the assigned Associate Transportation Representative plus Commission contributions towards medical and Social Security benefits.

The \$14,000 assessment is reasonable in that it is severe enough to properly reprimand Respondent for past illegal actions, and indicates to Respondent that the Commission is serious about enforcing its rules. The assessment is also large enough to encourage Respondent to make regulatory compliance a high priority in the future. Finally, the assessment includes a reasonable amount of compensation for the Commission's costs of investigation. For these reasons, we find the settlement to be reasonable in light of the whole record.

2. Consistent With the Law

The settlement is consistent with the law because it consists of appropriate remedies in light of the allegations in the OII and Commission precedent. Pub. Util. Code § 5313.5 provides in general that Respondent could be fined up to \$5,000 per violation, and charged for the Commission's investigative costs. The \$4,500 fine is a reasonable compromise in order to penalize for past violations and the \$9,500 assessment for investigative costs is a reasonable compromise in order to compensate the Commission for the costs of this investigation. Taken together, the \$14,000 assessment is sufficient under the circumstances of this case to deter future violations and encourage future compliance with the law.

The fine is consistent with the penalties the Commission has imposed upon other household goods carriers. For example, D.02-05-028, *Re Best Movers*, involved a carrier who provided service during suspension of its permit and when it did not have required insurance coverage. The Commission fined Best Movers \$19,000 (with \$14,000 suspended if the carrier complied with the decision), required restitution payments to customers for loss and damage to furniture, and imposed a three-year probationary period. D.01-08-035, *Re Ace of Bace Moving*, involved a carrier who, among other things, exhibited a practice of extracting unlawful additional amounts for a move by refusing to unload household goods, and a pattern of noncompliance with applicable law and regulations. The Commission ordered Ace of Bace to make reparations to customers for the unlawful charges, and fined the mover \$40,000 (reduced to \$10,000 upon making all required reparations). D.02-08-052, *Re Affordable Apartment Movers*, involved a carrier who provided service after suspension and revocation of its permit, failed to maintain insurance, and violated MAX 4 by, among other things, overcharging on oral estimates. The Commission ordered

restitution and fined *Affordable Apartment Movers* \$26,000 (reduced to \$6,5000 upon making restitution payments.)

Respondent's violations are similar to the violations found in the above proceedings. The settlement here is consistent with Commission precedent and consistent with the law.

3. In the Public Interest

The public interest in household goods carrier regulation is high, because the regulations governing these operators in large part address accountability to customers for the handling of their personal possessions. The settlement is in the public interest because it penalizes operators for failing to follow applicable law. The settlement also encourages Respondent to comply with all applicable laws in the future, and deters Respondent from future violations. Thus, the settlement enhances accountability to the public.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g) (2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge in this investigation.

Findings of Fact

1. The settlement effectively deters future violations, imposes a reasonable fine, assesses reasonable compensation for the Commission's costs of investigation, and brings about compliance with the law.

2. The settlement consists of appropriate remedies in light of the allegations in the OII and Commission precedent.

3. The fine is consistent with the penalties the Commission has imposed upon other household goods carriers.

4. The public interest in household goods carrier regulation is high, because the regulations governing these operators in large part address public accountability for the handling of personal belongings.

5. The settlement imposes a fine for failing to follow applicable law, and investigative costs for enforcing compliance; thus, Respondent's improper practices should cease.

6. The settlement enhances public accountability because it encourages Respondent to comply with all applicable laws in the future and deters Respondent from future violations.

Conclusions of Law

1. The settlement between Respondent and CPSD attached to this decision, as Appendix A, is reasonable, consistent with the law, and in the public interest and should be imposed.

2. In order to ensure proper compliance with this settlement, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The settlement between Fan Ding, an individual doing business as Lucky Moving Co., Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northam Immigration Service; and the Commission's Consumer Protection and Safety Division, attached to this decision as Appendix A, is approved.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Order Instituting Investigation and Order to Show Cause on the Commission's own motion into the operations and practices of Fan Ding (aka Ding Fan or Lisa Ding), an individual doing business as Lucky Moving Co., Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northman Immigration Service,

Applicant/Respondent.

I.04-07-003
(Filed July 8, 2004)

APPENDIX A

S E T T L E M E N T

The Parties to the Settlement Agreement (Agreement) are as follows:

CONSUMER PROTECTION AND SAFETY DIVISION
(CPSD) of the CALIFORNIA PUBLIC UTILITIES
COMMISSION (CPUC)

FAN DING, an individual doing business as Lucky Moving
Co., Lucky Movers, Jixiang Moving Co., Northam
Immigration Services and Northman Immigration Service

I. INTRODUCTION AND BACKGROUND

Pursuant to Article 13.5 of the Commission Rules of Practice and Procedure, the Respondent named above and the Consumer Protection and Safety Division (CPSD) hereby agree to settle without having an evidentiary hearing, the Order Instituting Investigation (I.) 04-07-003. A summary of the background is as follows:

- Staff began investigating Respondent in March 2002 after receiving complaints from licensed carriers that Respondent was advertising and operating without a permit.

- Respondent placed illegal advertisements in the Sing Tao Daily and World Journal newspapers despite cease and desist letters from Staff.
- On March 11, 2004, Staff obtained a Temporary Restraining Order (TRO) against Respondent. Respondent appeared at the hearing and opposed the TRO.
- On April 8, 2004, Staff conducted a sting call on Respondent, who provided a rate quote for the move, in violation of the TRO.
- On April 12, 2004, Staff obtained a Preliminary Injunction against Respondent. Respondent appeared at the Superior Court proceeding and opposed the Injunction.
- On July 8, 2004, the Commission voted out the OII which detailed Respondent's violations of the HHG Carriers Act and Commission regulations.
- On July 13, 2004, CPSD obtained a "Finding of Probable Cause" Order to disconnect phone numbers contained in Respondent's illegal advertisements.
- On July 21, all Parties were notified, consistent with Commission Rule 51.1, of a settlement conference to be held on July 28 at 10:00 a.m. at the Commission's San Francisco office
- On July 28, 2004, Staff held all party settlement talks with Respondent to discuss settlement possibilities and Respondent's future business plans. Respondent indicated that she sold her moving trucks.
- On August 26, 2004, a Prehearing Conference was held. Respondent indicated she would not challenge Staff's evidence of her illegal operations; would no longer operate as a Household Goods Carrier without obtaining a permit; and would like to settle this proceeding without hearings.
- On September 2, 2004, Respondent answered Staff's discovery requests. Respondent indicated that she had conducted over 100 moves without a permit.

- On or about September 28, 2004, the Respondent and CPSP counsel, Gregory Heiden, finalized agreement on Settlement terms after a series of negotiations over emails.

In consideration of the mutual covenants contained in this Settlement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

II. TERMS AND CONDITIONS

Fines. Within 30 calendar days after the Commission issues a decision adopting and approving this Settlement, the Respondent will pay the Commission as a fine the amount of \$3,500, and within every 90 calendar day period thereafter, pay an amount of \$3,500, until the Respondent has paid in total to the Commission \$14,000. This \$14,000 will be comprised of \$9,500 in investigative costs and \$4,500 in fines. Each of the payments must be in the form of a cashier check made payable to the order of the Commission and delivered to CPSP Transportation Enforcement Supervisor, Suong T. Le, 505 Van Ness Ave, San Francisco CA 94102.

Application. The Respondent may not advertise or otherwise hold herself out to the public or engage in business as a household goods carrier in any language until the Commission has issued the Respondent a household goods carrier permit. As part of her application, the Respondent must perform the following:

- Pay the appropriate licensing fees;
- Pass the required written MAX 4 examination;
- Submit fingerprints for background check;
- Maintain in effect and on file with the Commission the requisite insurance coverages; and
- Comply with all pertinent state statutes and Commission General Orders, tariffs, rules, and regulations governing household goods carriers, including but not limited to the Household Goods Carriers Act, Section 5101 et seq., General Orders 100-M, 136-C, 142, and the Commission's Maximum Rate Tariff 4.

III. DEFAULT AND REMEDIES

Pursuant to Section 5285(b), if the Respondent violates or fails to comply with any provision of this Settlement, Commission rules and regulations, or any Commission or

judicial decision, CPSD may petition to reopen this or initiate another Commission proceeding for purposes of, but not limited to, imposing fines and penalties under Sections 5313 to 5315.

IV. MISCELLANEOUS PROVISIONS

1. The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement, as indicated by California Constitution, Article XII, section 8. No Party may bring an action pertaining to this Settlement in any local, state, or federal court or administrative agency without first having exhausted its administrative remedies at the Commission.

2. The Parties acknowledge that this Settlement is subject to approval by the Commission. As soon as practicable after all the Parties have signed this Settlement, CPSD will file a Motion requesting Commission adoption. The Parties must furnish such additional information, documents, and/or testimony as the Commission may require in granting said Motion and adopting this Settlement.

3. The provisions of this Settlement are not severable. If any Party fails to perform its respective obligations under this Settlement, the Settlement may be regarded as rescinded.

4. The Parties acknowledge and stipulate that they are agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement. Respondent further acknowledges full understanding of her right to discuss this Settlement with her legal counsel, and has availed herself of that right to the extent deemed necessary. In executing this Settlement, each Party declares that the provisions

herein are fair, adequate, reasonable, and mutually agreeable. Respondent further acknowledge that as set forth in this Settlement, no promise or inducement has been made or offered her.

5. Each Party further acknowledges that after the execution of this Settlement, discovery may continue of facts that are in addition to or different from those known or believed to be true by any of the Parties. Respondent agrees to cooperate fully with such inquiries. However, it is the intention of each Party to settle, and each Party does settle, fully, finally, and forever, the matters set forth in this Settlement notwithstanding such discovery.

6. This Settlement constitutes the Parties' entire Settlement, which cannot be amended or modified without the express written and signed consent of all the Parties hereto.

7. This Settlement shall be binding upon the respective Parties hereto, their legal successors, assigns, agents, or corporations (e.g., parent, subsidiaries, affiliates, divisions, units, officers, directors, and/or shareholders).

8. This Settlement shall become effective and binding on the Parties as of the date it is fully executed.

IN WITNESS WHEREOF, the Parties, hereto have set their hands on the day
and in the year indicated below:

By: /s/ RICHARD W. CLARK Date: 11/1/04

Richard W. Clark
Director
Consumer Protection and Safety Division

By: /s/ GREGORY HEIDEN Date: 11/1/04

Gregory Heiden
Staff Counsel
Attorney for the Consumer Protection and Safety Division

By: /s/ FAN DING Date: 10/27/04

Fan Ding
Respondent

By: /s/ PETER CHAO Date: 10/27/04

Peter Chao
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document
**“JOINT MOTION OF CONSUMER PROTECTION AND SAFETY DIVISION
AND RESPONDENT FOR ADOPTION OF THE SETTLEMENT AGREEMENT”
I.04-07-003.**

A copy was served as follows:

[x] **BY E-MAIL:** I sent a true copy via e-mail to all known parties of record who
have provided e-mail addresses.

[x] **BY MAIL:** I sent a true copy via first-class mail to all known parties of record.

Executed in San Francisco, California, on the 1st day of **November, 2004.**

_____/s/ JOANNE LARK

Joanne Lark